



TRUSTEES NEED TO KNOW: MISTAKE - RECTIFICATION, RESCISSION AND THE RULE IN HASTING-BASS

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What is rectification?

Rectification is a court ordered discretionary remedy allowing a retrospective correction of a mistake to the wording of a document. There must be evidence to demonstrate that the parties were all clear on the terms of the transaction. In the case of a voluntary settlement, the purpose of rectification is to ensure that the trust document reflects the true intentions of the settlor as held by him at the date when the document was executed.

What is Section 48 of the Administration of Justice Act 1985?

In proceedings relating to the estates of deceased persons and trusts, the High Court has the power to authorise action to be taken in reliance on a barrister's legal opinion where (i) any question of construction has arisen out of the terms of a will or a trust; and (ii) an opinion in writing given by a person who has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990, has been obtained on that question by the personal representatives or trustees under the will or trust.

It is not possible to use Section 48 in circumstances where there is a dispute concerning the question of construction of the trust deed and how it should be corrected.

What is rescission?

Rescission means that a trust is set aside and treated as if it had never been made. This means that the assets revert to the settlor and if they are so minded they are able to start again.



Can a trustee's actions be set aside?

The rule in the case of *Hasting-Bass* enabled the Court to set aside actions taken by trustees which had unintended results in certain circumstances.

A trustee's ability to rely on this rule has recently been significantly restricted following the Supreme Court decision in the combined cases of *Pitt v Holt* and *Futter v Futter*. The Supreme Court held that the rule in *Hasting-Bass* should only apply where the trustees exercise a discretionary power, and act within the terms of that power, but in some way breach their duties in respect of that exercise. In this instance, the act may be voidable by the beneficiaries.

What is the test for rescission on the ground of mistake?

The Supreme Court in *Pitt v Holt* and *Futter v Futter* held that there must be a causative mistake of sufficient gravity to render it unjust for the transaction to stand.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this 'Need to Know' please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team:
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This **Need to Know** provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.